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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	CC Docket No. 01-92
Developing a Unified Intercarrier Compensation Regime	)	
	)	

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

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SUMMARY

Nextel applauds the Commission's initiative to take a broad view of inter-carrier compensation and to determine whether bill and keep is a superior compensation model for termination by carriers of one another's traffic. The Commission would advance the public interest by recognizing the unique statutory framework Congress has applied to Commercial Mobile Radio Service ("CMRS") and by centralizing CMRS-ILEC interconnection review at the Commission. The Commission has the legal authority not to apply the landline interconnection framework to CMRS interconnection and centralization of regulatory authority would avoid much of the ILEC gamesmanship that characterizes the current interconnection process.

Nextel's experience with ILEC interconnection matters persuades it that there is no possible way the Commission can forbear fi-om regulating interconnection terms and practices. ILECs have far and away the largest networks and greatest number of subscribers. It is evident that CMRS carriers need interconnection far more from ILECs than ILECs need CMRS interconnection and this situation breeds significant opportunities for abuse of ILEC market power. The Commission must also account for ILEC market power by preventing ILECs from engaging in discriminatory practices, such as charging their subscribers differently depending **upon** whether a call is interconnected or originated and terminated entirely within an ILEC's own network.

Bill and keep would make CMRS-ILEC interconnection arrangements far more administratively efficient and economical than they are today. CMRS carriers and ILECs waste enormous resources auditing and reconciling reciprocal compensation bills, when it would be far more efficient to employ a bill and keep model of compensation. Thus, the Commission should adopt a presumption of reasonableness for bill and keep as the appropriate rate for the mutual

exchange of CMRS-ILEC traffic. Nextel's overall traffic exchanged with ILECs is coming closer to approximate balance and a presumption in favor of bill and keep will allow all carriers to concentrate their precious resources elsewhere.

The Commission also must address other aspects of the CMRS-ILEC interconnection relationship. Despite a previous Commission determination that CMRS carriers' "local'' calling areas for purposes of reciprocal transport and termination is the Major Trading Area ("MTA"), many smaller, more rural ILECs insist on charging CMRS carriers non-reciprocal, access charge based rates to terminate CMRS traffic that is presented to the small ILEC for termination. Some state commissions have gone so far as to approve "Wireless Termination" tariffs that contain non-reciprocal, non-cost based rates for ILEC call termination.

This Commission understands that CMRS carriers cannot justify economically maintaining a direct physical connection with each and every ILEC throughout the nation. Indirect transiting arrangements are the efficient solution for all carriers, and ILECs must not refuse to terminate intra-MTA CMRS traffic at a bill and keep rate simply because the traffic originated outside the ILEC's landline exchange area or because the traffic was transited to it. Nextel supports cost-based payments to ILECs that act as transit carriers for their transport function. While transit traffic in relation to the total amount of traffic Nextel exchanges for termination is ***de*** *minimis,* an ILEC's refusal to terminate transit traffic on reasonable terms has a major impact on the subscribers of CMRS carriers, who cannot send to or receive calls from the subscribers of these ILECs.

Finally, the Commission should not overlook a typical ILEC interconnection practice that unreasonably retains a one-way stream of payments from the CMRS carrier to the ILEC. Rather than negotiate reciprocal terms for functions such as out-of-band signaling (SS7), ILECs instead

reference their tariffed rates within CMRS interconnection agreements. This allows ILECs to unilaterally and without notice alter the rates, and potentially, the terms of service. Where a CMRS carrier such as Nextel reciprocally provides SS7 functionality to an ILEC, the Commission should prohibit such references to tariffs and impose a presumption of bill and keep compensation for the exchange of network functionalities. Any other result rewards ILECs for developing new network systems and functionalities for their own benefit by permitting them to pass these costs onto other carriers, something they would be unable to achieve in a competitive market.

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Nextel Communications, Inc. ("Nextel"), by its attorneys, provides these comments in response to the above-captioned Notice of Proposed Rulemaking.[1] By adopting this *Notice,* the Federal Communications Commission ("Commission" or "FCC"), embarks on an ambitious mission to determine whether it is feasible and in the public interest to rationalize the current diverse range of intercarrier interconnection and compensation schemes subject to state, federal and international law and regulation. This goal is a challenging one, and the Commission should accept that it may be necessary to tackle and resolve the interconnection compensation reforms it adopts in stages. Nextel's comments focus primarily on the one area where the Commission can make immediate progress, by asserting its authority over the interconnection compensation arrangements that exist among incumbent local exchange carriers ("ILECs") and Commercial Mobile Radio Service ("CMRS") providers and establishing bill and keep as the presumptively reasonable rate for the exchange of traffic.

I. BACKGROUND

Nextel is a CMRS provider with nearly eight million subscribers located throughout the United States. Nextel interconnects with a variety of carriers and presently has over 150 interconnection agreements with ILECs for the reciprocal termination of local

1 Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-**192,** *Notice of Proposed Rulemaking,* FCC 01-132, (rel April 27, 2001) *("Notice").*

telecommunications traffic. Nextel recalls the days when ILECs refused to enter into interconnection arrangements unless it agreed to pay the ILEC for all traffic exchanged, even the traffic the ILEC presented to Nextel for termination on Nextel's network. The rates ILECs charged for interconnection were non-reciprocal and were grossly inflated.

Fortunately, the Commission recognized that ILECs were not complying with Commission rules requiring mutual compensation for the termination of interconnected local CMRS traffic and that the rates ILECs assessed had no relationship to their actual costs of call termination. In late 1995, the Commission instituted a rulemaking investigating whether it should impose "bill and keep" as an appropriate mutual compensation rate for the exchange of traffic between ILECs and CMRS providers.[2] Recognizing the inherently interstate nature of CMRS and that state-by-state, inconsistent regulation of CMRS interconnection and interconnection rates had led to abuse of ILEC market power, the Commission tentatively concluded that it should adopt bill and keep as a uniform federal interim compensation standard for local call termination between ILECs and CMRS providers. The Commission also sought comment on a range of options designed to prevent ILECs from impeding the competitive development of CMRS.[3]

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[2] Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, *Notice of Proposed Rulemaking,* 11 FCC Rcd 5020 (1996) *("CMRS Interconnection Notice").*

[3] Notably, these options included applying bill and keep for off-peak usage only; basing interconnection charges on a subset of the LEC's existing interstate access charges; basing interconnection charges on existing arrangements between neighboring LECs; applying the same rates, terms and conditions in existing LEC-cellular interconnecting arrangements to other CMRS providers; and applying various intrastate interconnection arrangements between LECs and new entrants.

The Commission, relying upon the specific authority conferred on it by Congress in the Omnibus Budget Reconciliation Act of 1993 (the "1993 Act"), concluded it had full power to remove CMRS-ILEC interconnection, as a substantive matter, from state jurisdiction.[4] Nextel agreed with the Commission's assessment of the scope of its statutory authority and continues to believe that the Commission has plenary authority over CMRS-ILEC interconnection.

Shortly after the Commission released its *CMRS Interconnection Notice,* the Telecommunications Act of 1996 (the "1996 Act") was passed into law, Given the extremely abbreviated statutory timetable for implementation of the local carrier interconnection provisions of the new law and the substantial overlap of issues raised in the *CMRS Interconnection Notice* and the local interconnection provisions of the 1996 Act, the Commission consolidated the record in both proceedings. In its landmark August 1996 *Local Competition Order,* the Commission determined that, for the time being, it would place CMRS-ILEC interconnection within the same interconnection framework as that of competitive landline local carriers. As the Commission stated:

> By opting to proceed under Sections 251 and 252, we are not finding that Section 332 jurisdiction over interconnection has been repealed by implication, or rejecting it as an alternative basis for jurisdiction. We acknowledge that Section 332 in tandem with Section 201 is a basis for jurisdiction over LEC-CMRS interconnection; we simply decline to define the precise extent of that jurisdiction at this time.[5]

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[4] Nextel strongly supported the Commission's proposal to preempt inconsistent and anti-competitive state regulation of CMRS interconnection. Nextel also supported the adoption of a mutual ILEC-CMRS interconnection compensation scheme of bill and keep. *See* Comments of Nextel Communications, Inc., CC Docket No. 95-185, filed March **4,** 1996, and Reply Comments of Nextel Communications, Inc., filed March 25, 1996.

[5] Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and* ***Order,*** 11 FCC Rcd 15499, 15517 (1996) *("LocalCompetition Order") aff'd. Iowa Utils. Bd v. FCC,* 135 F.3d 535 (U.S. App. 8th. Cir. 1998) *aff'd AT&T Corp v. Iowa Utils. Bd.,* 525 U.S. 366 (1999) (subsequent history omitted).

Following through on its preferred approach of adopting a general local interconnection framework, the Commission determined that it would not require state commissions in their review or arbitration of interconnection agreements to impose bill and keep as a uniform reciprocal compensation model, but rather would allow state commissions to permit bill and keep as an appropriate compensation model when the traffic exchanged for reciprocal termination was roughly in balance. The Commission was concerned that if bill and keep were imposed in any other context, it might prevent a carrier from recovering the actual costs it incurred to provide interconnection.

The overall results of the Commission's implementation of the 1996 Act's interconnection provisions generally have improved the interconnection arrangements Nextel and other CMRS providers have with many of the major ILECs. Large ILECs have stopped charging Nextel non-reciprocal rates and some smaller ILECs similarly have stopped charging non-reciprocal rates. Under the Commission's current framework each interconnector pays the other for call termination, typically on a per minute basis. The compensation payment is symmetrical, and is based upon the interconnecting ILEC's estimation of its particular forward looking cost of call termination. While the actual per minute rate of reciprocal compensation charged varies from ILEC to ILEC, the per minute interconnection rates Nextel is charged generally have decreased over time. Like other carriers, Nextel renegotiates its ILEC interconnection agreements every few years.

Notwithstanding these developments, however, there are aspects of the process that **could** be improved. ILECs maintain the practical ability to force CMRS carriers to accept the terms they proffer for interconnection. Nextel, for example, has yet to have an ILEC agree to a bill and keep interconnection arrangement, even though the traffic Nextel exchanges with ILECs is

trending towards an approximate balanced traffic exchange. This ILEC intransigence is unfortunate, as bill and keep as a compensation mechanism offers CMRS carriers, ILECs and indirectly, the customers of CMRS and ILEC carriers, many benefits. One of the most significant benefits of a bill and keep regime is that each carrier can shed an unnecessary function of reviewing, reconciling and auditing a number of carrier-specific bills for local call termination, and instead place those resources into developing competitive services.

II. THE COMMISSION SHOULD ASSERT FULL JURISDICTION OVER CMRS-ILEC INTERCONNECTION

Even before the passage of the 1996 Act, the Commission recognized the powerful promise that facilities-based competition held to transform the local telecommunications marketplace from a monopoly to a vibrant source of diverse, competitive services and service providers. CMRS providers have invested heavily to build extensive networks throughout the country. They have expended enormous sums of capital to acquire spectrum, build infrastructure and serve wireless customers, who now expect anytime anywhere instant communications capability as a matter of course. CMRS service areas are in many cases nearly nationwide and nationwide CMRS carriers negotiate and maintain interconnection agreements with literally hundreds of ILECs. CMRS providers with a strong regional presence must also interconnect to numerous large and small ILECs to exchange traffic.

Whatever else the Commission does on inter-carrier compensation and interconnection reform, it should first take the opportunity to do what it did not do previously: put in place an economically and administratively efficient regime for CMRS-ILEC interconnection, Not only does the Commission have the unique statutory authority that allows it unilaterally to determine the appropriate form of a CMRS-ILEC interconnection regime, but by asserting authority and establishing the rules of the road, the Commission can hasten the day when it will no longer

have to regulate interconnection or services delivered to end users, because facilities-based competition will have eliminated the need for such regulation.

A. The Commission Has Full Statutory Authority Over CMRS and CMRS-ILEC Interconnection.

The Commission has struggled with the competitive issues surrounding ILEC-CMRS interconnection ever since cellular service was launched and it became obvious, despite the critical nature of ILEC interconnection to the cellular carrier, that ILECs had no particular incentive to cooperate by offering cellular carriers reasonable rates and terms for interconnection. The Commission considered what it might do to address continuing problems with repeated ILEC failures to enter reasonable negotiations with cellular carriers, carriers the Commission considered to be "co-carriers" in the local exchange market. It concluded that ILECs had an obligation under Section 201(b) of the Communications Act to negotiate with cellular carriers in good faith to reach interconnection agreements. The Commission also adopted a cellular non-discrimination provision, which required that ILECs with cellular affiliates not discriminate between their cellular affiliate and the non-affiliated cellular operator in the terms and rates offered for interconnection. While this addressed the most blatant forms of anti-competitive behavior, these policies did not yield fair, cost-based reciprocal interconnection arrangements.

One reason the Commission believed itself to be unable to do more to effect changes in ILEC interconnection practices was that cellular operators were radio common carriers, subject to Commission jurisdiction for interstate services **and** state commission jurisdiction for intrastate services. State commissions generally viewed cellular as **a** luxury service, and took little interest in modifying the interconnection relationship between a cellular operator and an ILEC to be a relationship of co-carrier peers. As the predominant amount of traffic exchanged under

interconnection agreements was intrastate, local traffic, the Commission had little direct opportunity to assert jurisdiction.[6]

This situation completely changed after Congress passed the 1993 Act. The 1993 Act, among other things, provided the Commission for the first time with the authority to auction spectrum for Personal Communications Services ("PCS"). Recognizing also that Nextel's form of Specialized Mobile Radio services competed directly with cellular services, and that PCS was also expected to compete with cellular, Congress created a wholly new regulatory classification, encompassing all these services, Commercial Mobile Service.[7] Making broad changes to the previously jurisdictionally split radio common carrier regime, Congress modified Section 2(b) and 332 of the Communications Act to provide the Commission with plenary jurisdiction over CMRS.[8] Thus, while the 1993 Act plainly preempted state rate and entry regulation over CMRS, it also did something far more profound – it vested full jurisdiction over substantive carrier regulation of CMRS in the Commission.[9] While the Commission has been slow to recognize the

[6] The Commission maintained, however, that it had the jurisdiction to step into and resolve interconnection disputes between ILECs and cellular carriers, but only in the instance where the rate charged was so high as to effectively negate the federal right of interconnection. ***See*** The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, ***Memorandum Opinion*** *and* ***Order,*** 1986 FCC LEXIS 3878 at ¶ 10; The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, ***Declaratory*** *Ruling,* 2 FCC Rcd 2910,2914 (1987).

[7] This is the same regulatory classification the Commission calls Commercial Mobile Radio Service.

[8] Congress also provided a mechanism within Section 332 to restore traditional state jurisdiction over "intrastate" CMRS service once it achieved the status of a ubiquitous substitute for landline telephone service.

[9] ***See*** Leonard J. Kennedy and Heather A. Purcell: Section 332 of the Communications Act of 1934: A Federal Regulatory Framework That Is "Hog Tight, Horse High, And Bull Strong," 50 Fed. Comm. L.J. 547 (1998).

full import of this particular aspect of the legislation, whether the Commission exercises the full extent of its authority is irrelevant to the basic point that it has this authority.[10]

In light of current conditions, as discussed more fully below, the Commission should take this opportunity to assert the full measure of its jurisdiction over CMRS carriers under Sections 2(b) and 332. There is little question that a uniform federal framework for CMRS-ILEC interconnection would promote both economic and administrative efficiency for CMRS providers and for ILECs. The sole reasons Nextel can imagine that ILECs might object to the Commission fashioning a uniform regime that displaces state by state oversight of CMRS-ILEC interconnection arrangements are either that they perceive the current state-federal framework as having competitive advantages to them in allowing them to obstruct the CMRS as a competitive force or that they understand that split jurisdiction provides opportunities to extract financial concessions from CMRS carriers who must have interconnection. State public service commissions lack the legal authority to regulate CMRS providers as local exchange carriers and, regardless of their views, must follow current federal rules that require them to treat CMRS traffic in a manner that ignores state-established landline local exchange boundaries.[11] Presumably these same state commissions have little interest in continuing to oversee CMRS-ILEC interconnection arrangements where they have only limited jurisdiction over the CMRS

[10] Courts reviewing this issue uniformly have held that the Commission has full authority to regulate LEC-CMRS interconnection rates under Sections 2(b) and 332 of the Communications Act. *See, e.g., Iowa Utilities Board v. FCC*, 135 F.3d 535 (U.S. App. 8th Cir. 1998) *aff'd in relevant part 525* U.S. *366* (1999); *Qwest Corp. v. FCC*, 252 F.3d. 462 (D.C. Cir. 2001).

[11] *See Local Competition Order* at 16016.

carrier and its services and have to follow a set of Commission rules that, to some degree, already acknowledge that CMRS is inherently interstate.[12]

The Commission itself recognized in its *Local Competition* ***Order,*** that, as a legal matter, it is not compelled to use the Section 251/252 framework developed to establish ground rules for landline local competition to govern the terms of CMRS interconnection. It expressly reserved the option to take a different, federal approach in the future if experience demonstrated there were problems with the Section 251 and ***252*** framework as applied to CMRS interconnection. **As** Nextel discusses below, there are ILECs that use state commissions either to propagate or to preserve unreasonable interconnection practices and service arrangements with CMRS providers. Perhaps naturally, some state commissions have an inherent bias towards resolving disputes in favor of the "home team."

These problems persuade Nextel that it is time for the Commission to take the step it first proposed in late 1995 and impose a uniform standard for interconnection compensation on CMRS-ILEC interconnection that is wholly the Commission's regime. That compensation scheme should, as a general matter, foster bill and keep as the presumptively reasonable compensation rate for the exchange of local traffic to and from CMRS providers. The *Notice* provides much of the legal analysis supporting Commission action to either centralize or make more uniform existing state review of CMRS interconnection arrangements with ILECs.[13]

[12] Indeed, the Commission could not have established the MTA as the relevant local calling area for CMRS carriers if it did not believe it had full substantive jurisdiction over CMRS services.

[13] *See Notice* at **¶¶ 84-89.**

B. Some ILECs Abuse the Section 251/252 Process by Unilaterally Filing State Tariffs Governing CMRS Interconnection.

The Commission, state commissions and carriers are now relatively familiar with the Section 251 and 252 interconnection negotiation and arbitration framework and have experience to judge its efficiency, fairness and effectiveness. Nextel, for example, has negotiated state-by-state interconnection agreements several times since 1996 with both major ILECs and smaller, more rural ILECs in nearly every state of the Union. Nextel has no objection to periodically reviewing and updating its interconnection agreements with other carriers. Over the course of several years there may be new network planning or engineering changes that can be fruitfully addressed as agreements are reviewed and updated.

One unfortunate aspect of applying the full panoply of Section 251/252 to CMRS interconnection, however, is that ILECs have a ready-made forum at each state commission to persuade state decision makers that there are collateral issues related to CMRS interconnection that they must decide. When this occurs, Nextel and other wireless carriers are at a substantial disadvantage: the state commissions do not regulate CMRS and are not particularly concerned about assisting CMRS providers to become competitors to landline service providers.

A fairly recent example of this problem is a case involving rural ILECs and the Missouri Public Service Commission ("PSC"). There are well over a thousand ILECs operating across the United States. As noted elsewhere herein, no CMRS provider – and indeed no carrier – would have direct physical interconnection arrangements with each of these ILECs. This is primarily because the volume of traffic exchanged, for example, between a small rural ILEC **and** a national CMRS operator such as Nextel would be ***de*** *minimis*. The cost of establishing a direct physical connection to each small or rural ILEC would be prohibitive. Indeed, ILEC resources would be inefficiently consumed if every carrier sought to directly connect to every other carrier. CMRS

carriers understandably have relied upon transiting arrangements with larger ILECs, such as Southwestern Bell Telephone Company ("Southwestern Bell"), to receive and to complete calls made by small rural ILEC subscribers to CMRS subscribers and CMRS subscribers to small rural ILEC landline customers. These transiting arrangements are critical to the continued flow of CMRS-ILEC traffic, even though in Nextel's case, the amount of transit traffic it exchanges in relation to the total traffic it exchanges with ILECs is de minimis.

A number of small Missouri ILECs, apparently dissatisfied with transit traffic arrangements under which Southwestern Bell Telephone Company failed to compensate them when it passed them CMRS-originated transit traffic for termination, last year filed "Wireless Termination" tariffs with the Missouri PSC. These Wireless Termination tariffs contained per minute rates ranging from 5.06 cents to **7.44** cents per minute for ILECs to terminate intra-MTA calls from the customers of wireless carriers, depending upon the access rates of each particular ILEC.[14] Wireless carriers protested the unilateral tariff filing by each of the twenty-nine ILECs, claiming, among other things, that these tariffs violated both the 1996 Act and FCC interconnection rules. Some of the specific concerns raised by CMRS providers included the non-reciprocal nature of the charge, the access charge basis for the rate charged and the ILECs' general failure to negotiate in good faith prior to filing these Wireless Termination tariffs.[15]

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[14] Each Wireless Termination tariff specified that the small ILEC was to be compensated by the wireless carrier for the traffic or the traffic could be blocked. The termination rate was a composite of current intrastate, intraLATA access rates of each of the filing ILECs for switching and transport, plus a two-cent per minute "adder" to contribute to the cost of their local loop facilities. These per minute rates are substantially higher than the reciprocally-applied 1.655 cents per minute, the highest rate the Missouri PSC had previously approved in negotiated agreements between CMRS carriers and three other small Missouri ILECs.

[15] In the Matter of Mark Twain Rural Telephone Company's Proposed Tariff to Introduce Its Wireless Termination Service, Case No. TT-2001-139, Report and Order of Public Service Commission of the State of *Missouri*, issued February 8, 2001 ("*Missouri PSC* Order").

The small ILECs attempted to justify the filing of their Wireless Termination tariffs by stating that neither Southwestern Bell, the carrier handling the transit traffic, nor the CMRS carriers were compensating the smaller ILECs for their call termination function.[16] In discussing the historical reasons why CMRS carriers have no practical choice but to rely upon transiting services provided by large ILECs such as Southwestern Bell, the Missouri PSC observed that: "given the number of small LECs, indirect interconnection between CMRS carriers and small LECs, through a large LEC's tandem switch, is the only economically feasible means of interconnection available."[17]

The Missouri PSC rejected CMRS carrier claims that the small ILECs had ignored their federal statutory responsibilities in unilaterally filing a non-reciprocal, non-cost-based tariff.[18] The PSC determined that:

> the Act does not state that reciprocal compensation is a necessary component of the tariffs of LECs or ILECs. Therefore, the Commission concludes that Section 251(b)(5) of the Act simply does not apply to the proposed tariffs herein at issue. For the same reason, the Commission concludes that the proposed tariffs are not unlawful under Section 251(b)(5) of the Act."

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[16] Southwestern Bell's Missouri state tariff attempted to eliminate Southwestern Bell's responsibility for reaching an appropriate arrangement to split termination charges with small LECs by stating that wireless carriers could not send traffic to Southwestern Bell for termination with other carriers unless the wireless carrier has a direct compensation agreement with the other carrier. Regardless of this statement in its tariff, Southwestern Bell continued to carry wireless traffic for termination to the small LECs.

[17] *Missouri PSC* ***Order*** at 15.

[18] The Missouri PSC appears not to have considered whether it had the jurisdiction to be setting rates for "wireless termination service" in the first place. Because CMRS is an interstate service, any form of terminating access under consideration should have more properly been interstate, rather than intrastate access. The actions of these Missouri ILECs speak volumes about the opportunities for misconduct a split federal-state interconnection regime holds for ILECs.

[19] *Id.*

The Missouri PSC concluded that if CMRS carriers where unhappy with this result, they were free to pursue direct interconnection arrangements with each of the twenty-nine small ILECs.[20]

Similarly, the Missouri PSC concluded that the pricing standards of Section 252(d) were not binding in the instance of ILEC-filed state tariffs. The PSC further concluded that the tariffed rates "meet the requirements of Missouri law and should be approved."[21] The Missouri PSC also clarified that, under the terms of the tariffs, Southwestern Bell had an obligation to assist any small ILECs that requested it in blocking CMRS traffic for non-payment.

While the Missouri PSC apparently believed that its Order allowing one-way access rates to apply to CMRS traffic terminated to an ILEC would "create incentives for CMRS carriers to act," the PSC entirely failed to consider whether any CMRS carrier could make a business case that would justify the costs of establishing a direct physical connection to a small ILEC to whom it sends *de **minimis*** amounts of traffic. Ironically, the PSC in the same Order observed that direct connection with small ILECs, given the amount of traffic exchanged, was economically infeasible. Thus, the PSC's notion of allowing non-reciprocal state access tariffs to apply to CMRS terminating traffic as a means of making the parties come to the bargaining table was, at best, mistaken. At worst, it flies in the face of the many years the FCC and the CMRS industry have spent to realize a pro-competitive, reciprocal model for CMRS-ILEC interconnection. That the Missouri ILECs could find a regulator able to justify reaching such an anti-competitive result strongly suggests there are flaws in the present system that must be addressed and resolved by the FCC.

[20] *Id.*

[21] *Id.* at 42.

The Missouri PSC action and similar state actions on interconnection, access and the issue of compensation for transit traffic are troubling as some state commission decisions plainly contravene current Commission rules and Section 251/252 of the 1996 Act. No public policy case can be made for state actions that undermine a competitive interconnection framework. From Nextel's perspective, these bad results easily could be avoided by this Commission taking full and direct control of CMRS-ILEC interconnection matters, including by dealing definitively with the appropriate treatment of transit traffic.[22]

Because the Commission is not limited to applying the Section 251/252 framework in matters of CMRS-ILEC interconnection, it can deal broadly and freely to eliminate state actions that contravene reasonable and reciprocal interconnection arrangements. It would substantially assist CMRS providers and ILECs if the interconnection agreement process was centralized at the Commission. As there is no need for continued state-by-state review and approval of CMRS-LEC interconnection agreements, the Section 251/252 delegation of authority to state public utility commissions to review agreements need not apply. Indeed, it would be preferable for a national carrier such as Nextel to negotiate a single, multistate interconnection agreement with ILECs that also operate on a multistate basis, such as Verizon and SBC.

There may well be some aspects of the landline Section 251/252 process that can and perhaps should remain for CMRS interconnection. At the very least, however, there should be uniform federal rules applying to CMRS interconnection that automatically preempt state regulatory actions inconsistent with a revised CMRS interconnection framework directed by the

[22] Another basis for Commission action is that the traffic being terminated is CMRS traffic, which, as a matter of substantive jurisdiction, is interstate traffic. Assuming for the sake of argument that any form of access charge would apply, the charge should never be an intrastate access charge, but an interstate access charge.

Commission. Current CMRS interconnection rules preclude state commissions from treating CMRS carriers as local exchange carriers and prevent the application of access charges to CMRS calls that are terminated within the same MTA as they originate. If state commissions continue to have a role in CMRS-ILEC interconnection, the Commission needs to expand CMRS-specific rules to prohibit such ILEC practices as imposing one-way access charges on CMRS traffic termination. State commissions otherwise are likely to keep being presented with variations on the Missouri ILEC "Wireless Termination" tariffs which improperly address how the very critical component of CMRS traffic, transit traffic, should be treated.

C. The Commission Cannot Forbear from Regulating CMRS-ILEC Interconnection.

The *Notice* seeks comment on whether it might be appropriate for the Commission to exercise its forbearance authority and withdraw from any form of regulation of the interconnection relationship between CMRS providers and ILECs.[23] Prior to any such action, however, the Commission must first have determined that enforcement of existing regulation is unnecessary to ensure carrier rates are reasonable and carrier practices not unjust or unreasonably discriminatory and, additionally, that enforcement of regulation is unnecessary for the protection of consumers.[24]

Given the current ILEC incentive and ability to disadvantage CMRS interconnectors, the Commission would be abdicating its responsibilities under the Communications Act to forbear from regulating CMRS-ILEC interconnection. Nextel maintains a wide range of commercial and supply relationships with other carriers. Quite often Nextel can negotiate service arrangements

[23] ***Notice*** at ¶ 88.

[24] 47 U.S.C. § 160 (1996).

with other carriers that have a high degree of reciprocity. In fact, Nextel prefers, where it is possible, to use other carriers and vendors besides ILECs. Indeed, Nextel's experience is that ILECs are unwilling to negotiate on the same commercially reasonable terms as other carriers and vendors who are not well entrenched competitors. However, Nextel and other CMRS providers have no real alternative to dealing extensively with ILECs because ILECs have by far and away the largest share of subscribers with whom Nextel customers want to communicate. ILECs also have geographically ubiquitous facilities, unlike competitive LECs. That alone makes ILEC services essential to a wireless carrier that must use ILEC facilities for a variety of cell site, network backhaul and database support functions.

ILECs are not focused particularly on reaching commercially reasonable service arrangements because, in the case of interconnection, ILECs are well aware that a wireless carrier has no other alternative carrier with whom it can deal.[25] This fact alone creates an enormous imbalance in bargaining incentive and bargaining power, as there is no market discipline affecting ILEC behavior.[26]

Another potential issue that impedes full and fair interconnection negotiations with an ILEC is the ILECs' concern that under the Commission's "pick and choose'' rule implementing Section 252(i), any concession made to one CMRS provider might have to be replicated in all

[25] As the Commission itself recently recognized, competitive problems can arise when a carrier has a "terminating access" monopoly on its end user customers. Reform of Access Charges Imposed by Competitive Local Exchange Carriers, *Seventh Report and Order and Further Notice of Proposed Rulemaking,* FCC 01-146 (April 27,2001). Where the carrier with the terminating access monopoly is also the incumbent LEC, this provides the ILEC with another form of bargaining leverage a CMRS carrier lacks.

[26] Also, CMRS carriers are viewed as ILEC competitors or as potential competitors.

that ILEC's landline interconnection agreements. The Commission, of course, could remove that concern if it dealt with CMRS interconnection outside of the Section 251/252 framework.

Fundamentally, however, if ILECs were interested in commercially reasonable arrangements for interconnection with CMRS providers, they would have agreed to bill and keep as a reasonable interconnection compensation model long ago. The fact that ILECs still can unilaterally insist on actual per call compensation when it advantages them and then on bill and keep when actual compensation disadvantages them proves that ILEC possess and continue to exert their market power.

Where there is any evidence of continuing ILEC market power, the Commission should not even entertain the idea of regulatory forbearance. Indeed, if anything, the Commission should consider whether its previous decision to sunset its already minimally intrusive ILEC-CMRS in-region competitive safeguards in January 2002 is still warranted.[27] The Commission in 1997 may have been overly optimistic about the development of substantial new competition to ILEC services that has either now failed or failed to materialize. Maintaining a regime where there is a separate ILEC CMRS affiliate is still an important, pro-competitive safeguard.

III. BILL AND KEEP IS AN EFFICIENT FORM OF INTERCONNECTION COMPENSATION FOR ILEC-CMRS TRAFFIC

Despite the Commission's prior lack of enthusiasm for bill and keep as a form of interconnection compensation, there are reasons why bill and keep ought now to be the preferred method of compensation between CMRS carriers and ILECs. When it previously rejected bill and keep as the main compensation model under the Section 251/252 framework, the

[27] Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Report ***and*** Order, 12 FCC Rcd 15668 (1997); recon., 14 FCC Rcd 11343 (1999); *further* recon. 15 FCC Rcd 414 (2000).

Commission nevertheless did not preclude bill and keep as an outcome available in state commission arbitration under certain circumstances. The Commission's current rule permits the adoption of a bill and keep methodology by state commissions if: 1) the presumption of symmetrical rates is not rebutted and 2) the amount of traffic carriers exchange is approximately in balance.[28] Thus, under the present rule, a state commission can specify bill and keep as an acceptable default if traffic exchanged is roughly in balance and carriers do not want to establish their particular costs for call termination. When the Commission asserts its full authority over CMRS-ILEC interconnection under Section 2(b) and 332, bill and keep should be firmly established as the presumptively reasonable, but not exclusive, compensation method for the exchange of CMRS traffic.

A. Bill and Keep Should Be the Presumptively Reasonable Compensation Rate for the Exchange of CMRS–ILEC Traffic.

The current Section 251/252 interconnection regime as applied to CMRS carriers generates inefficient costs, borne by carriers and subscribers, that can easily be avoided. Nextel's experience in negotiating interconnection agreements confirms that ILECs still maintain vastly superior bargaining power because they have the network to which every other carrier must interconnect. There are no countervailing market forces that discipline this ILEC market power. ILECs are, by and large, indifferent as to whether CMRS carriers interconnect with them or not.[29] In contrast, it is essential that CMRS carriers have direct physical interconnection arrangements with all the ILECs with whom they exchange any significant amount of local

[28] **See47** CFR § 51.713.

[29] **As** seen in the recent case in Missouri, ***supra*** at 11-13, some ILECs have no incentive to directly connect at all if their state commissions allow them to continue to impose one-way access rates for their termination of transit traffic.

traffic. This absolute imbalance of incentives can easily be exploited by ILECs under the current interconnection regime.

ILECs have a hundred year history and demonstrated ability to perform cost studies to establish their approximate costs of interconnection. To Nextel's knowledge there is no ILEC that has failed to provide a state commission with cost study evidence of the suitability of a per minute rate an ILEC wishes to charge its competitors to interconnect.[30] Because under the Commission's rules, the ILEC cost is the presumptive symmetrical rate for the exchange of traffic by both interconnectors. This creates a basic disincentive for other carriers to put themselves through the time, expense and uncertainty of a state commission cost review process to rebut the application of symmetrical rates based on ILEC costs. This disincentive exists regardless of whether the other carrier might in fact have higher per minute traffic sensitive costs of call termination.

Thus, the current administrative framework for interconnection effectively rewards an ILEC for insisting on actual compensation rather than relying upon bill and keep as the rough justice equivalent of actual compensation. Only when ILECs began to realize there was a potential that they might become a net payor under an interconnection agreement did any ILEC begin to tout the administrative and economic benefits of bill and keep.

CMRS carriers have had to divert enormous resources they could have otherwise used to develop competitive services into participating in state-by-state interconnection approval and arbitration processes that might have been avoided. In addressing necessary changes for CMRS-

[30] Ironically, in the case of ISP-bound traffic, the same ILECs that so vociferously insisted on actual per call compensation on the assumption that they would always come out ahead in receiving net compensation found that there are circumstances where other carriers may generate sufficient traffic such that ILECs may become net payors.

ILEC interconnection, the Commission would go a long way towards equalizing bargaining power and increasing administrative and economic efficiency by modifying its rules to make bill and keep the presumptively reasonable rate for the exchange of CMRS-ILEC traffic.

The Commission would not be acting unfairly or arbitrarily in presuming bill and keep to be the reasonable rate for the exchange of CMRS-ILEC traffic. Over time, the traffic Nextel is exchanging with ILECs is coming closer into balance.[31] The Commission already has acknowledged that bill and keep is a fair result where the amount of traffic is roughly balanced. The Commission should, however, go further and adopt bill and keep as the presumptively reasonable rate for the exchange of CMRS traffic regardless of the relative balance or imbalance of traffic. So long as the Commission maintains some safety valve, such as allowing carriers to demonstrate their additional costs of interconnection under specified circumstances, this presumption in favor of bill and keep would be fair and reasonable for all parties.

One of the most significant benefits to a presumption in favor of bill and keep is that it allows all carriers to concentrate their resources elsewhere. A symmetrical reciprocal cost recovery regime requires both interconnecting carriers to maintain staffs specifically for the review, monitoring and billing for the exchange of traffic. In Nextel's case, as it interconnects to over 150 ILECs, it must have billing specialists familiar with all the major and smaller ILEC billing mechanisms. Despite Nextel's attempts to have all ILECs present similar bills in similar formats, ILECs unilaterally determine how they will present traffic and billing information to Nextel and Nextel has no real choice but to accept a wide range of inconsistent billing and reporting formats from 150 ILECs. As the ILEC-originated traffic is coming closer and closer

[31] For example, currently on a nationwide average basis, Nextel terminates only 10% less traffic than it exchanges with ILECs for termination to landline customers.

into balance with the traffic Nextel sends to ILECs for termination, the entire traffic reconciliation process appears to be approaching the stage of diminishing returns for Nextel and for each ILEC. A presumption in favor of bill and keep would allow each ILEC and CMRS provider to redeploy the resources that are wasted in this reconciliation process to more productive uses.

The Commission has used rebuttable presumptions in other contexts to achieve a wide variety of policy goals.[32] Most recently, in seeking to ensure that CLEC access charges are just and reasonable, the Commission implemented a benchmark pricing approach to CLEC rates. If CLECs adhere to the Commission's prescribed benchmark, their rates are accorded a conclusive presumption of reasonableness.[33] Carriers wishing to charge beyond the benchmark rate still have the option of entering into private negotiations with interexchange carriers. Only if

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[32] FCC Updates Pole Attachment Rules and Policies, *News Release,* CS Docket No. 97-98 (April 3,2000) (retaining the use of the current rebuttable presumptions and the use of historical costs in the formula used to calculate maximum just and reasonable rates utilities may charge for attachments made to a pole, duct, conduit or right-of-way); Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Third Report and Order in CC Docket No.* 98-147 *Fourth Report and Order in CC Docket No. 96-98*, 14 FCC Rcd 20912 (1999) (establishing a presumption that where the splitter is located within the incumbent LECs' Main Distribution Frame the cost for a cross connect for entire loops and for the high frequency portions of loops should be the same); Provision of Directory Listing Information under the Communications Act of 1934, As Amended; *Third Report and Order in CC Docket No.* 96-115, *Second Order On Reconsideration of the Second Report and Order in CC Docket No.* 96-98, *and Notice of Proposed Rulemaking in CC Docket No.* 99-273, 14 FCC Rcd 15550 (1999) (setting presumptively reasonable rates for subscriber list information and apprising carriers to be prepared to justify higher rates if a directory publisher files a complaint).

[33] Reform of Access Charges Imposed by Competitive Local Exchange Carriers, *Seventh Report and Order and Further Notice of Proposed Rulemaking,* FCC 01-146 (April 27,2001). The Commission determined that its conclusive presumption of reasonableness to tariffed CLEC rates set at or below the benchmark insulated a CLEC with qualifying rates from being subject to Section 208 complaint.

interexchange carriers agree voluntarily to accept a higher CLEC access rate can be a higher, non-tariffed rate be charged.

The Commission has also accorded a presumption of reasonableness to ILEC rates. For example, in its *Transport Rate Structure and Pricing* proceeding, the Commission accorded a presumption of reasonableness to an ILEC's initial restructured transport rates if they were based on the rates for comparable special access services in effect on a certain date.[34] In the event that an ILEC's initial restructed transport rates fell below the benchmark, the ILEC would have to make a "substantial cause" showing that their rates were reasonable, or in the alternative, **file** new transport rates that satisfied the benchmark, but could not increase the proportion of transport revenue recovered through other charges.

Thus, it is evident that the Commission has the authority and the expertise to establish rate presumptions, such as a presumption in favor of bill and keep for CMRS-ILEC compensation for the exchange of traffic. Such a presumption is not only legal, it also reinforces the Commission's existing pro-competitive framework and eliminates the need for any regulator to scrutinize and second guess carrier cost studies.

B. Bill and Keep for CMRS Traffic Will Have No Undesirable Secondary Effects on the Public Switched Network.

The *Notice* seeks comment on the impact a broad-based bill and keep compensation regime would have on federal-state jurisdictional separations, end user prices and continuing support for affordable universal telephone service. Nextel does not anticipate that applying a presumption in favor of bill and keep for the exchange of CMRS traffic would have any adverse

[34] *See* Transport Rate Structure and Pricing, *Third Memorandum Opinion and Order on Reconsideration and Supplemental Notice of Proposed Rulemaking,* 10 FCC Rcd 3030 (December **1994).** This presumption of reasonableness applied only if the ratio between an ILEC's special access DS3 and DS1 rates were at or above a the benchmark ratio of 9.6 to 1.

impact on federal-state separations, on the federal universal service program, on ILEC or CMRS carrier end user pricing for service, or on joint carrier network planning and carrier network investments.

The costs of CMRS networks never have been subject to any jurisdictional separations process or any uniform system of accounts. Thus, any payments ILECs might make in the present reciprocal compensation context to CMRS carriers likewise are not subject to any jurisdictional separation process. While ILEC regulated telecommunications services are subject to the jurisdictional separations process, it is Nextel's understanding that ILECs book the revenues they receive from CMRS interconnectors as interstate revenues. Thus, there is no ILEC federal/state separations "hole" that is created by adopting a presumption of bill and keep for CMRS traffic exchanged with ILECs.[35]

Nextel anticipates that CMRS bill and keep would result in cost savings to all carriers. Importantly, a change in the presumption from actual cost recovery to bill and keep should have no impact on any carrier's federal universal service payment obligations. Federal universal service mandatory assessments are based on end user telecommunications revenue. Interconnection payments are carrier-to-carrier payments that already are excluded from the federal universal service program assessment.

CMRS carriers have never had the luxury of shifting their costs onto competitors as ILECs have, and thus, there should be no serious arbitrage or economic distortion created for CMRS customers resulting from a move to bill and keep. Nextel will, as it always has, shoulder

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[35] Even if one could make the case that CMRS interconnection revenue is a significant portion of an ILEC's revenue, which Nextel sincerely doubts can be demonstrated, there can be no dispute that net ILEC revenue for interconnection overall is in decline as traffic exchanges comes closer into balance.

the costs of its own network expansion, including its costs of physically interconnecting with ILECs that will not disappear with the Commission's adoption of a presumption in favor of bill and keep.

On the ILEC side, net interconnection revenue from CMRS carriers is declining. Even if it were not, the revenue ILECs receive from CMRS reciprocal interconnection has never been so significant that its loss would cause a major revenue gap that would in turn cause an ILEC to institute proceedings either at the Commission or within the states to raise rates for other services.

There is, however, a competitive concern with either bill and keep or asymmetrical compensation requiring Commission attention to avoid anti-competitive ILEC behavior. ILECs must be precluded from directing any new "cost recovery" initiatives towards ILEC subscribers that call CMRS subscribers. For example, Nextel can envision a scenario where ILECs, in the absence of a federal rule, impose per call surcharges on their landline customers for calling wireless customers. While any such practice would be unreasonable even in the absence of a Commission rule precluding it, the Commission should be particularly vigilant to ensure that ILECs not penalize their customers in any way for calling non-ILEC customers. As ILECs are the carriers with the largest and far more pervasively subscribed to network, any form of ILEC surcharge would be extremely damaging to the development of competition. Just as in the days when the Bell System withheld interconnection and triumphed because it had the biggest network and subscriber base, any ILEC on-network/off-network end user price discrimination that the Commission condones could spell the end of any real facilities-based competition.

Finally, no serious concern should be raised regarding the effect of a bill and keep regime on CMRS and ILEC incentives to make appropriate network investments. Under current

interconnection agreement framework, there is typically a network forecasting and planning coordination requirement that allows parties to interconnection agreements to jointly plan for additional demand for service both overall and in particular geographic areas. This type of joint planning and reciprocal carrier responsibility to invest in physical interconnection facilities will continue in a bill and keep environment.

C. The Commission Must Confirm and Clarify its Intra-MTA Calling Scope Rule.

In its *Local **Competition Order,*** the Commission appropriately determined that CMRS carriers had "local" service areas that look nothing at all like landline telephone local calling areas.[36] If landline carriers could have insisted on defining the scope of the statutory reciprocal compensation obligation only to extend to their landline exchange areas, then CMRS operators presumably would have had to pay one-way access rates for the ILEC origination or termination of traffic that is treated as local within CMRS networks. This practice would have been highly inequitable and would have penalized CMRS networks simply because they are not configured like and do not operate like landline networks.

In implementing the Telecommunications Act of 1996, the Commission specifically found that ILECs had a Section 251(b)(5) duty to establish reciprocal compensation arrangements for the local traffic originated and terminated by CMRS carriers: "We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminated within the same MTA . . . is subject to transport and termination rates under section 251(b)(5), rather

[36] *Local **Competition Order*** at 16016**.** Nextel, for example, treats its entire domestic network as "local" to the Nextel subscriber, as the subscriber pays no additional roaming charges when he or her moves from his or her "home" market.

than interstate or intrastate access charges."[37] Thus, although there may be many individual ILECs that have landline operations within any particular MTA, each ILEC is required to treat the CMRS traffic they originate or terminate as though it were local, regardless of where a particular call begins and ends within an MTA.

The Commission should take this opportunity to clarify aspects of its intra-MTA CMRS rule. Many rural ILECs, such as the twenty-nine small ILECs in Missouri, have ignored the Commission's rule and charge non-reciprocal, access type rates for termination. The flimsy justification proffered is that a CMRS carrier is not entitled to intra-MTA reciprocal transport and termination because the ILEC is sending or receiving traffic that comes from outside its service area and that one-way access rates are appropriate in this circumstance. They suggest that CMRS carriers pay for direct trunking arrangements to bring terminating CMRS traffic directly to them.[38]

As Nextel has already observed – and the Commission has already recognized, there are technical and economic reasons why it makes no sense to establish direct physical connections with every carrier within an MTA.[39] Transiting using the interconnection provided by one or more large ILECs with whom significant amounts of CMRS traffic is exchanged is the only

[37] *Local Competition Order* at 16016.

[38] Many of these same ILECs place CMRS calls their subscribers originate onto interexchange carrier facilities, thereby creating an arbitrage opportunity for the ILEC to charge the interexchange carrier originating access for handling the call.

[39] *Local Competition Order* at 15991. There the Commission, in interpreting section 251(a) language requiring telecommunications carriers to interconnect "directly or indirectly" observed that "telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices." This ability of the CMRS carrier to choose the most technically and economically efficient method of interconnection, however, would be meaningless if ILECs could all demand direct connections with CMRS providers within an MTA.

economicallyjustifiable way for a CMRS provider to receive or to terminate calls in many rural areas. Nextel already extends its network to interconnect with ILEC facilities where there is sufficient demand.

Thus, it is critical to CMRS carriers that rural or small ILECs not be permitted to ignore their previously established duty to treat intra-MTA CMRS calls as local calls. The solution, of course, must also involve the large ILECs that, as seen in the Missouri example of Southwestern Bell, have tried to eliminate their responsibility to transit traffic to those ILECs where direct physical connection is not an economic or technical option. ILEC cooperation in the maintenance of intra-MTA transit traffic arrangements is essential. While transit traffic represents a ***de minimis*** amount of overall traffic that is exchanged by Nextel and other CMRS carriers for termination by ILECs, it would be prohibitively expensive for Nextel and other CMRS providers to have direct connections to carriers to whom Nextel's customers rarely terminate calls.

It may be appropriate that there be an actual cost charge imposed by the ILEC that is transporting the traffic to another, terminating ILEC within the same MTA.[40] But under no circumstances should an ILEC that reciprocally benefits from its ability to send and receive intra-MTA CMRS calls be permitted to refuse to exchange calls at reciprocal rates simply because there is not a direct connection between the ILEC and the CMRS carrier.

Using Nextel's proposed reformulation of a CMRS interconnection compensation rule, the endpoint ILEC with whom a CMRS carrier exchanges intra-MTA traffic would accept bill and keep as the presumptively reasonable rate. If both the ILEC and the CMRS carrier agreed

[40] This transport charge should be paid either by the carrier that originates or terminates the call. The transport charge should never be levied exclusively on the CMRS carrier, as the end point ILEC's customers reciprocally benefit by calling CMRS subscribers.

that bill and keep would not, given their particular circumstances, result in reasonable compensation to both parties for their mutual call termination function, then the Commission should fashion a backstop that properly accounts for ILEC market power and intransigence in establishing reasonable terms for CMRS interconnection. ILEC application of one-way access charges for reciprocally-provided services would never be appropriate, however, because it would violate the basic tenants of the Communications Act's competition and interconnection provisions and Commission rules and policies implementing them.

D. Bill and Keep Must Not Be the Only Available Interconnection Compensation Option for CMRS Carriers and ILECs.

As the Commission recognized in its *Local Competition* ***Order*** in declining to adopt bill and keep as its preferred compensation model, there is no one size fits all solution for all interconnection arrangements. While the Commission previously decided that it would be most efficient for competing local carriers to exchange traffic based upon the demonstrated costs of the ILEC, it is obvious, based upon the experience over the last few years, that it would be administratively simpler and far more efficient if CMRS-ILEC traffic were to be exchanged on a bill and keep basis.

Nextel, however, recognizes that different types of networks may have different costs that might logically result in each carrier seeking to assess different, asymmetrical interconnection charges. That is what is contemplated by Section 252(d) and what the Commission's rules currently permit. Indeed, Sprint PCS has expended significant efforts in state-by-state arbitrations to demonstrate that its costs of call termination is higher relative to that of ILECs with which it interconnects. Sprint PCS only seeks to avail itself of the existing opportunity the Commission provides for carriers to demonstrate that asymmetrical compensation would better capture a carrier's costs of call termination. The Section 251/252 framework also provides that

carriers can negotiate voluntary interconnection agreements with terms that vary from those contained in the statute. Certainly the Commission should allow carriers that voluntarily agree to pay one another actual compensation to continue to have that option available.

Beyond voluntary arrangements, however, Nextel envisions that there may be extreme or unusual circumstances where some type of compensation should be paid. The Commission will have to develop a rule or policy to guide parties when they cannot come to agreement and do not believe that the presumption in favor of bill and keep yields appropriate results. Nextel expects that the record in this proceeding may assist the Commission in fleshing out appropriate alternatives to bill and keep where network costs are substantially dissimilar or where traffic exchanged is highly imbalanced. In arriving at this policy, however, the Commission should be mindful of ILEC market power and ILEC incentives and ability to impede competition or to impose unreasonable commercial relationships on other interconnectors.

E. The Commission Cannot Overlook Other Aspects of the Interconnection Relationship.

While the main focus of the ***Notice*** is on compensation for reciprocal transport and termination of traffic, there are other aspects of the interconnection relationship between an ILEC and a CMRS carrier that should be dealt with in comprehensive Commission rules addressing CMRS-ILEC interconnection. Looking at bill and keep compensation solely for the exchange of traffic may overlook the other important interdependent relationships that carriers that exchange traffic have with one another.

One instance of this is ILEC tariffed services that are often referred to and incorporated by reference in CMRS interconnection agreements. ILECs typically try to avoid making certain functions they provide under tariff available on a different basis within the scope of an interconnection agreement, even when the CMRS carrier reciprocally provides the same service

or function to the ILEC. One of the major problems that this approach of referencing charges to either federal or state ILEC tariffs presents is that by insisting on referencing tariffs, the ILEC maintains for itself the ability to change the rate and potentially the terms of service unilaterally and without notice to the CMRS interconnector.

The largest of these tariffed charges – aside from charges for physical interconnection facilities – are ILEC charges for Signaling System 7 ("SS7") functions. Qwest, for example, in its interconnection agreements with Nextel, refers to its FCC Tariff No. 1 and imposes **SS7** Message Level charges that total $0.00255 per call attempt. Qwest has not agreed to any type of offset of this per call attempt charge for the **SS7** functionality Nextel provides for the calls it presents to Qwest for termination. Thus, Nextel has no alternative but to pay a one-way charge for an out-of-band network signaling functionality that is provided reciprocally.

There should be no question that when a CMRS carrier provides its own out-of-band signaling functionality and passes this information to the ILEC that signaling information is reciprocally generated and exchanged. In those instances, the ILEC should not be permitted to charge the CMRS carrier for its **SS7** functions. Similar to the presumption in favor of bill and keep for the exchange of traffic, the Commission should employ a presumption that when both carriers have a particular service support functionality, that neither should meter use or charge the other for utilizing the function in support of reciprocal call termination.

Any framework other than bill and keep rewards ILECs for developing new network functionalities – for their own use and benefit – by allowing them to impose the costs of development on other carriers. It also highlights the danger of permitting ILECs to refer to a charge they have tariffed rather than requiring that they negotiate in good faith – with the

presumption that bill and keep should be the appropriate outcome – where each carrier has borne its own costs of developing or deploying a widely utilized network function or feature.

IV. CONCLUSION

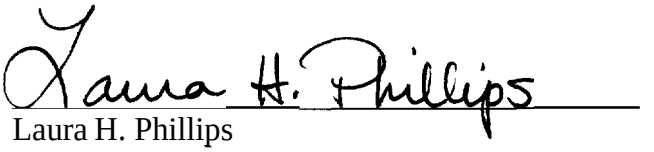
The first step the Commission should take in this proceeding should be to centralize CMRS-ILEC interconnection at the Commission. The Commission has the legal authority to apply a unique framework to CMRS and CMRS interconnection, and centralization of this function will advance the public interest. The Commission cannot forbear from regulating ILEC interconnection terms and practices. It is evident that CMRS carriers need interconnection far more from ILECs than ILECs need CMRS interconnection and this situation breeds significant opportunities for abuse of ILEC market power. Nextel's experiences, described herein, graphically highlight continuing ILEC market power and misuse of this power to disadvantage CMRS operators.

The Commission should encourage bill and keep for CMRS-ILEC interconnection arrangements and the Commission should employ a presumption of reasonableness for bill and keep as the appropriate rate for the mutual exchange of traffic. Such a presumption would allow all carriers to concentrate their precious resources in areas other than maintaining staffs to audit and reconcile reciprocal carrier bills for call termination. Bill and keep should also be the

presumptively reasonable rate applied to reciprocally provided network functions, such as the mutual provision of Signaling System 7 capabilities. The Commission's actions on the matters addressed by Nextel herein will encourage competition and generate efficiencies for all interconnecting carriers.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.



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